

APR 2 2013

Mr. James D. Spaniolo, J.D. President University of Texas at Arlington 701 South Nedderman Drive Arlington, TX 76013-0000

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Dear Mr. Spaniolo:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine the University of Texas at Arlington (UTA) a total of \$82,500 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq. (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on UTA's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; statements with a description of type and frequency of campus safety programs; a description of crime prevention programs; a statement explaining the importance of preserving evidence in cases of alleged sex crimes and an explanation of how to preserve the evidence; and a statement that describes procedures on voluntary, confidential reporting of crimes. 34 C.F.R. § 668.46(b)(2). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment



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to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

The Department conducted a program review at UTA from March 23, 2010 to March 25, 2010. The focus of the review was UTA's compliance with the Clery Act. The review consisted of an examination of UTA's policies and procedures related to the Clery Act, incident reports, arrest records, disciplinary files, and interviews with appropriate UTA staff members.

On December 17, 2010, the Department issued a Program Review Report (PRR) to UTA. The review found that UTA had not complied with the Clery Act and the Department's implementing regulations. UTA responded to the report on February 22, 2011. After reviewing UTA's response, the Department issued its Final Program Review Determination (FPRD) letter to UTA on December 22, 2011. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that UTA did not publish accurate and complete crime statistics for calendar year 2008.¹

UTA FAILED TO PROPERLY CLASSIFY, COMPILE AND DISCLOSE CRIME STATISTICS

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistical reporting must be disclosed and made available as part of the institution's ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

UTA did not properly compile and publish accurate crime statistics for calendar year 2008. As a result, students, employees, and the public were not provided with accurate crime statistics in UTA's ASR and UTA did not report accurate information to the Department's Campus Crime and Security Website for calendar 2008. Statistical data published in the institution's ASR and provided to the Department's website must be accurate and reliable. Specifically, UTA

¹ The FPRD included an additional finding (Finding #2) regarding the institution's failure to report crime statistics separately for non-contiguous locations. The Department has decided not to impose a fine relating to that Finding.

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improperly classified a forcible sex offense (FSO) as an "Assault." Incident report # 200809316 indicated that the victim stated that an "unknown male grabbed her thigh and female intimate area through her clothing." Based on this fact, this incident should have been classified as a case of Forcible Fondling. The crime of Forcible Fondling is defined by the Federal Bureau of Investigation's Uniform Crime Reporting Program to include, "the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against the person's will." The Department adopted and incorporated that definition in the Department's regulations implementing the Clery Act. 34 CFR §668.46(c)(7) and Appendix A to Subpart D of Part 668. Forcible Fondling is a sub-category of the Clery-reportable forcible sexual assault crime classification and, therefore, was required to be included in the statistical disclosures for calendar year 2008. The Department disagrees with UTA's contention in its February 22, 2011 response that Forcible Fondling requires evidence of a state of tumescence or utterance to indicate that the perpetrator's touching was for sexual gratification. The definition included in the Department's regulations does not include this requirement. The improper classification of the "Forcible Sexual Assault" as an "Assault" resulted in the crime statistic not being reported in UTA's ASR and the crime statistics to the Department for calendar year 2008.

UTA acknowledged that it improperly classified incident # 200805595 as "Assault of a Family Member." The incident report indicated that UTA Police Department (UTAPD) responded to a report of domestic violence. The complainant, "Roommate # 1" reported that "Roommate # 2," the aggressor, stated, "I'm going to beat you; I'm going to hit you." Roommate #2 further stated, "If I hit you, I'm going to kill you." The incident report added that mutual combat ensued with Roommate # 2 striking Roommate # 1 in the head and midsection. The report detailed that while holding Roommate # 1 over a stove burner by her hair, Roommate # 2 then stated, "If you don't let go of me, I'm going to turn this on." Roommate # 2 also attempted to strangle Roommate # 1, tore out a large section of her hair, and ripped her earrings out, all of which resulted in fear, pain, injury and bleeding. On the basis of these facts, this incident should have been classified as an Aggravated Assault. The improper classification of the reported crime as an "Assault of a family member" resulted in the crime statistic not being reported in UTA's ASR and the crime statistics to the Department for calendar year 2008.

UTA also acknowledged that it under-reported 7 Liquor Law Violations (LLV), 16 Drug Law Violations (DLV), and 4 Weapons Law Violations (WLV) in its ASR and in the 2008 statistical report to the Department. The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. The correction of violations does not diminish the seriousness of not correctly reporting these incidents at the time they occurred.

In determining the amount of fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs

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in which it participates. The latest year for which complete funding data is available for UTA is 2010-2011 award year. According to the Department records, UTA received approximately \$46,211,144 in Federal Pell Grant (Pell) funds, \$155,806,140 in Federal Direct Loan funds and \$3,362,779 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,831,456, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,415,923, and for institutions participating in the Campus-Based programs, the median funding level is \$272,450. Accordingly, UTA is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at UTA are serious. These failures have endangered UTA's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crime and statistics in order to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and UTA's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for UTA's failure to properly classify and report Incident # 200809316 as a sexual assault. This is a serious violation because current, prospective students/employees, and the public must be able to rely on accurate and complete campus crime information contained in the ASR and posted on the Department's Campus Crime and Security Website. I have assessed \$27,500 for UTA's failure to properly classify and report incident # 200805595 as an Aggravated Assault. This is a serious violation because current, prospective students/employees, and the public relied on inaccurate crime information contained in the ASR and posted on the Department's Campus Crime and Security Website.

I have assessed \$27,500 for UTA's failure to report in its ASR and to the Department 7 LLVs, 16 DLVs, and 4 WLVs for calendar year 2008. This is a serious violation because the missing crime statistics rendered UTA's 2008 ASR and crime statistics to the Department virtually inaccurate and unreliable. I impose a fine of \$5,000 for each disciplinary action not included in the statistics up to a maximum of \$27,500. In this case, UTA failed to include 27 disciplinary actions so I have assessed the maximum amount.

The fine of \$82,500 will be imposed on **April 22, 2013**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. UTA may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

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If UTA chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group U.S. Department of Education Federal Student Aid/Program Compliance 830 First Street, NE – UCP-3, Room 84F2 Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of UTA's case to a hearing official who will conduct an independent hearing. UTA is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If UTA does not request a hearing but submits written material instead, I will consider that material and notify UTA of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT UTA SUBMITS MUST BE RECEIVED BY APRIL 22, 2013; OTHERWISE, THE \$82,500 FINE WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of UTA's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

Mary E. Gust, Director

Administrative Actions and Appeals Service Group

Federal Student Aid/Program Compliance

U.S. Department of Education

Enclosure

cc: Dr. Belle S. Wheelan, President, Southern Association of Colleges and Schools Commission on Colleges, via bwheelan@sacscoc.org
Dr. Raymund Paredes, Commissioner of Higher Education, Texas Higher Education Coordinating Board, via Raymund.Paredes@thecb.state.tx.us